

This draft Order supersedes the draft Order published on 29th January 2008 and is being issued free of charge to all known recipients of that draft.

Draft Order laid before Parliament under section 14(1) of the Legislative and Regulatory Reform Act 2006 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2008 No.

REGULATORY REFORM

HEALTH AND SAFETY

The Legislative Reform (Health and Safety Executive) Order 2008

Made - - - -

Coming into force - - 2008

The Secretary of State for Work and Pensions (“the Secretary of State”) makes this Order in exercise of the powers conferred by section 2 of the Legislative and Regulatory Reform Act 2006⁽¹⁾ (“the 2006 Act”).

For the purposes of section 3(1) and (3) of the 2006 Act, the Secretary of State considers that, where relevant, the conditions under sections 3(2) and (4) are satisfied.

The Secretary of State has consulted in accordance with section 13(1) and (2) of the 2006 Act.

The Secretary of State has laid a draft of this Order and an explanatory document before Parliament in accordance with section 14(1) of the 2006 Act.

As provided for in section 15 of the 2006 Act, the affirmative resolution procedure, (within the meaning of Part 1 of the 2006 Act) applies in relation to the making of this Order.

Pursuant to section 17(2) of the 2006 Act, the draft has been approved by resolution of each House of Parliament after the expiry of the 40-day period referred to in that provision.

Citation and Commencement

1. This Order may be cited as the Legislative Reform (Health and Safety Executive) Order 2008 and shall come into force on the day after it is made.

⁽¹⁾ 2006 c.51 as amended by article 3 of, and paragraph 146 of Schedule 1 to, the Government of Wales (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388); see section 32 for the definitions of “Minister of the Crown” and “regulatory function”.

Abolition of the Health and Safety Commission and Executive

2. The Health and Safety Commission and the Health and Safety Executive, as established under section 10 of the Health and Safety at Work etc. Act 1974(2), are abolished.

Establishment of the new Health and Safety Executive

3. The Health and Safety at Work etc. Act 1974 shall be amended as specified in articles 4 to 20 of this Order.

4. For section 10 substitute —

“10. Establishment of the Executive

(1) There shall be a body corporate to be known as the Health and Safety Executive (in this Act referred to as “the Executive”).

(2) The provisions of Schedule 2 shall have effect with respect to the Executive.

(3) The functions of the Executive and of its officers and servants shall be performed on behalf of the Crown.

(4) For the purpose of any civil proceedings arising out of those functions—

(a) in England and Wales and Northern Ireland, the Crown Proceedings Act 1947 shall apply to the Executive as if it were a government department within the meaning of that Act, and

(b) in Scotland, the Crown Suits (Scotland) Act 1857 shall apply to the Executive as if it were a public department within the meaning of that Act.”

5. For sections 11 to 13 substitute—

“11. Functions of the Executive

(1) It shall be the general duty of the Executive to do such things and make such arrangements as it considers appropriate for the general purposes of this Part.

(2) In connection with the general purposes of this Part, the Executive shall—

(a) assist and encourage persons concerned with matters relevant to those purposes to further those purposes;

(b) make such arrangements as it considers appropriate for the carrying out of research and the publication of the results of research and the provision of training and information, and encourage research and the provision of training and information by others;

(c) make such arrangements as it considers appropriate to secure that the following persons are provided with an information and advisory service on matters relevant to those purposes and are kept informed of and are adequately advised on such matters—

(i) government departments,

(ii) local authorities,

(iii) employers,

(2) 1974 c.37. Sections 16(1), 18(5), 43(3) and 50(1) are amended by the Employment Protection Act 1975 (c.71), sections 116 and 125, Schedule 5, paragraphs 3 to 5, 7 and 8; Schedule 15, paragraphs 12 and 16, and Schedule 18. Sections 27(2) and (3) and 55(1) are amended by the Employment Act 1989 (c.38) section 29, Schedule 6, paragraphs 10 and 11, and Schedule 7, Part 1. Section 28(3)(a) and (4) is amended by the Environment Act 1995 (c.25) section 120 and Schedule 22, paragraph 30. Section 28(5) is amended by S.I.2005/3363, article 5. Sections 16(2) and 50(3) are amended by the Health Protection Agency Act 2004 (c.17), section 11(1) and Schedule 3, paragraph 5. Sections 14(1), 16(1) and 18(5) are amended by the Railways Act 2005 (c.14), section 2, Schedule 3, paragraphs 3, 4, 9 and 10 and Schedule 13, Part 1.

- (iv) employees,
- (v) organisations representing employers or employees, and
- (vi) other persons concerned with matters relevant to the general purposes of this Part.

(3) The Executive shall submit from time to time to the Secretary of State such proposals as the Executive considers appropriate for the making of regulations under any of the relevant statutory provisions.

(4) In subsections (1) to (3)—

- (a) references to the general purposes of this Part do not include references to the railway safety purposes; and
- (b) the reference to the making of regulations under the relevant statutory provisions does not include a reference so far as the regulations are made for the railway safety purposes.

(5) It shall be the duty of the Executive—

- (a) to submit to the Secretary of State from time to time particulars of what it proposes to do for the purpose of performing of its functions;
- (b) to ensure that its activities are in accordance with proposals approved by the Secretary of State; and
- (c) to give effect to any directions given to it by the Secretary of State.

(6) The Executive shall provide a Minister of the Crown on request—

- (a) with information about its activities in connection with any matter with which the Minister is concerned; and
- (b) with advice on any matter with which he is concerned, where relevant expert advice is obtainable from any of the officers or servants of the Executive, but which is not relevant to the general purposes of this Part.

12. Control of the Executive by the Secretary of State

(1) The Secretary of State may approve any proposals submitted to him under section 11(5)(a) with or without modifications.

(2) The Secretary of State may at any time give to the Executive—

- (a) such directions as he thinks fit with respect to its functions, or
- (b) such directions as appear to him requisite or expedient to give in the interests of the safety of the State.

(3) The Secretary of State may not under subsection (2) give any directions with regard to the enforcement of the relevant statutory provisions in any particular case.

(4) The reference to directions in subsection (2)(a)—

- (a) includes directions modifying the Executive's functions, but
- (b) does not include directions conferring functions on the Executive other than any functions of which it was deprived by previous directions given under subsection (2)(a).

13. Powers of the Executive

(1) Subject to subsection (2), the Executive shall have power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of its functions, including a function conferred on it under this subsection.

- (2) The power in subsection (1) shall not include the power to borrow money.
- (3) The Executive may make agreements with a government department or other person for that department or person to perform any of its functions, with or without payment.
- (4) Subject to subsections (5) and (6), the Executive may make agreements with a Minister of the Crown, with a government department or with a public authority to perform functions exercisable by that Minister, department or authority, with or without payment.
- (5) The functions referred to in subsection (4)—
- (a) in the case of a Minister of the Crown, include functions not conferred by an enactment;
 - (b) shall be functions which the Secretary of State considers can be appropriately performed by the Executive; and
 - (c) do not include any power to make regulations or other instruments of a legislative character.
- (6) The Executive may provide services or facilities, with or without payment, otherwise than for the general purposes of this Part, to a government department or public authority in connection with the exercise of that department's or authority's functions.
- (7) The Executive may appoint persons or committees of persons to provide it with advice in connection with any of its functions and, without prejudice to subsection (8), it may remunerate these persons.
- (8) The Executive may, in connection with the performance of its functions, pay to any person—
- (a) travelling and subsistence allowances, and
 - (b) compensation for loss of remunerative time.
- (9) Any amounts paid under subsections (7) and (8) shall be such as may be determined by the Secretary of State, with the approval of the Minister for the Civil Service.
- (10) The Executive may—
- (a) carry out, arrange for, or make payments for the carrying out of, research into any matter connected with its functions, and
 - (b) disseminate or arrange for or make payments for the dissemination of information derived from this research.
- (11) The Executive may include, in any arrangements made for the provision of services or facilities under subsection (6), provision for the making of payments to the Executive, or any person acting on its behalf, by other parties to the arrangements and by persons using those services or facilities.”.

6.—(1) Section 14 is amended as follows.

(2) In subsection (1), for “the Commission” substitute “the Executive”.

(3) For subsection (2), substitute—

“(2) The Executive may at any time—

- (a) investigate and make a special report on any matter to which this section applies; or
- (b) authorise another person to investigate and make a special report into any such matter.

(2A) The Executive may at any time, with the consent of the Secretary of State, direct an inquiry to be held into any matter to which this section applies.”.

- (4) In subsection (3), for “subsection (2)(b)” substitute “subsection (2A)”.
- (5) For subsection (5) substitute—
- “(5) In the case of a special report made by virtue of subsection (2), or a report made by the person holding an inquiry by virtue of subsection (2A), the Executive may cause the report, or so much of it as the Executive thinks fit, to be made public at such time and in such manner as it thinks fit.”.
- (6) In subsection (6)—
- (a) for each reference to “the Commission” substitute “the Executive”;
- (b) in paragraph (a), for “subsection (2)(a)” substitute “subsection (2)”; and
- (c) in paragraph (b), for “subsection (2)(b)” substitute “subsection (2A)”.
- (7) In subsection (7), for “subsection (2)(b)” substitute “subsection (2A)”.
7. In section 15(4)(a), for “the Commission” substitute “the Executive”.
8. In section 16, for each reference to “the Commission” substitute “the Executive”.
9. In section 17(3)(a), for “the Commission” substitute “the Executive”.
- 10.—(1) Section 18 is amended as follows.
- (2) In subsection (4)(b), for “the Commission” substitute “the Executive”.
- (3) After subsection (4) insert—
- “(4A) Before the Executive gives guidance under subsection (4)(b) it shall consult the local authorities.
- (4B) It shall be the duty of the Executive and the local authorities—
- (a) to work together to establish best practice and consistency in the enforcement of the relevant statutory provisions;
- (b) to enter into arrangements with each other for securing cooperation and the exchange of information in connection with the carrying out of their functions with regard to the relevant statutory provisions; and
- (c) from time to time to review those arrangements and to revise them when they consider it appropriate to do so.”.
- (4) In subsection (5)(b), for “the Commission” substitute “the Executive”.
- (5) In subsection (7)—
- (a) for “paragraph (a) of section 13(1)” substitute “subsection (3) of section 13”,
- (b) for “that paragraph” substitute “that subsection”, and
- (c) each time it appears, omit “the Commission or”.
- 11.—(1) Section 27 is amended as follows.
- (2) In subsection (1), for each reference to “the Commission” substitute “the Executive”.
- (3) In subsection (2), after “Minister of the Crown to”, omit “the Commission or”.
- (4) For subsection (3), substitute—
- “(3) In the preceding subsection, any reference to a Minister of the Crown or the Executive includes respectively a reference to an officer of that person or of that body and also, in the case of a reference to the Executive, includes a reference to—
- (a) a person performing any functions of the Executive on its behalf by virtue of section 13(3);

- (b) an officer of a body which is so performing any such functions; and
 - (c) an adviser appointed under section 13(7).”.
- (5) In subsection (4), omit “of the Commission or, as the case may be,”.
- 12.—**(1) Section 28 is amended as follows.
- (2) In subsection (3)—
- (a) in paragraph (a), omit “the Commission,”; and
 - (b) in paragraph (e), for each reference to “section 14(2)” substitute “section 14(2) or (2A)”.
- (3) For subsection (4), substitute—
- “**(4)** In the preceding subsection, any reference to the Executive, the Environment Agency, the Scottish Environment Protection Agency, a government department or an enforcing authority includes respectively a reference to an officer of that body or authority (including, in the case of an enforcing authority, any inspector appointed by it), and also, in the case of a reference to the Executive, includes a reference to—
- (a) a person performing any functions of the Executive on its behalf by virtue of section 13(3);
 - (b) an officer of a body which is so performing any such functions; and
 - (c) an adviser appointed under section 13(7).”.
- (4) In subsection (5)(a), after “of that subsection, a purpose” omit “of the Commission or”.
- (5) In subsection (7), for each reference to “section 14(2)” substitute “section 14(2) or (2A)”.
- 13.** In section 34(1)—
- (a) in paragraph (a), for “(2)(a)” substitute “(2)”; and
 - (b) in paragraph (b), for “(2)(b)” substitute “(2A)”.
- 14.** In section 43—
- (a) in subsection (1)—
 - (i) for each of the first two references to “the Commission” substitute “the Executive”; and
 - (ii) omit the words from “and it shall” to the end; and
 - (b) in subsection (3), omit “the Commission,”.
- 15.** In section 45(1), for each reference to “the Commission”, substitute “the Executive”.
- 16.—**(1) Section 50 is amended as follows.
- (2) For subsection (1), substitute—
- “**(1)** Where any power to make regulations under any of the relevant statutory provisions is exercisable by the Secretary of State, that power may be exercised either—
- (a) so as to give effect (with or without modifications) to proposals submitted by the Executive under section 11(3); or
 - (b) subject to subsection (1AA), independently of such proposals.
- (1AA) The Secretary of State shall not exercise the power referred to in subsection (1) independently of proposals from the Executive unless he has consulted the Executive and such other bodies as appear to him to be appropriate.”.
- (3) In subsection (2), for “the Commission” substitute “the Executive”.
- (4) In subsection (3)—

- (a) for “11(2)(d)”, substitute “11(3)”; and
- (b) for each reference to “the Commission” substitute “the Executive”.

17. In section 53(1)—

- (a) omit the definition of “the Commission”; and
- (b) in the definition of “the Executive”, for “10(5)” substitute “10(1)”.

18.—(1) Section 55 is amended as follows.

(2) In subsections (1) and (2), for each reference to “the Health and Safety Commission” substitute “the Health and Safety Executive”.

(3) For subsection (5), substitute—

“(5) Without prejudice to section 12, it shall be the duty of the Health and Safety Executive, if so directed by the Secretary of State, to enter into arrangements with him for the Executive to be responsible for maintaining the said service.”.

(4) In subsection (6)(b), for “the Health and Safety Commission” substitute “the Health and Safety Executive”.

19. In section 59(5), for “the Commission” substitute “the Executive”.

20. For Schedule 2, substitute the schedule set out in Schedule 1 to this Order.

Transitional provisions

21.—(1) Any reference to the Health and Safety Executive in any enactment passed or made before the day on which this Order comes into force shall have effect on and after that day as a reference to the Health and Safety Executive as established by this Order.

(2) Schedule 2 has effect.

Consequential Amendments

22. Schedule 3 has effect.

Signed by authority of the Secretary of State for Work and Pensions

Date

Bill McKenzie
Parliamentary Under Secretary of State
Department for Work and Pensions

SCHEDULE 1

Article 20

THE SCHEDULE TO BE SUBSTITUTED FOR SCHEDULE 2
TO THE HEALTH AND SAFETY AT WORK ETC. ACT 1974

“SCHEDULE 2

Additional Provisions Relating to the Constitution etc. of the Health and Safety Executive
Section 10

The Health and Safety Executive

1. The Executive shall consist of—
 - (a) the Chair of the Executive, and
 - (b) at least seven and no more than eleven other members (referred to in this Schedule as “members”).
- 2.—(1) The Secretary of State shall appoint the Chair of the Executive.
(2) The Secretary of State shall appoint the other members of the Executive according to sub-paragraph (3).
(3) The Secretary of State—
 - (a) shall appoint three members after consulting such organisations representing employers as he considers appropriate;
 - (b) shall appoint three members after consulting such organisations representing employees as he considers appropriate;
 - (c) shall appoint one member after consulting such organisations representing local authorities as he considers appropriate; and
 - (d) may appoint up to four other members after consulting, as he considers appropriate—
 - (i) the Scottish Ministers,
 - (ii) the Welsh Ministers, or
 - (iii) such organisations as he considers appropriate, including professional bodies, whose activities are concerned with matters relating to the general purposes of this Part.
- (4) Service as the Chair or as another member of the Executive is not service in the civil service of the State.
- (5) The Secretary of State, with the approval of the Chair, may appoint one of the other members appointed under sub-paragraph (2) to be the deputy chair of the Executive.

Terms of Appointment of the Executive

3. Subject to paragraphs 4 and 5, a person shall hold and vacate office as the Chair or as another member according to the terms of the instrument appointing him to that office.
4. The Chair or any other member of the Executive may at any time resign his office by giving notice in writing to the Secretary of State.
5. The Secretary of State may remove a Chair or other member who—
 - (a) has been absent from meetings of the Executive for a period longer than six months without the permission of the Executive;
 - (b) has become bankrupt or has made an arrangement with his creditors;

- (c) in Scotland, has had his estate sequestrated or has made a trust deed for creditors or a composition contract;
- (d) has become incapacitated by physical or mental illness; or
- (e) is otherwise, in the opinion of the Secretary of State, unable or unfit to carry out his functions.

Remuneration of Members

6.—(1) The Executive shall pay to each member such remuneration and such travelling and other allowances as may be determined by the Secretary of State.

(2) The Executive shall pay to, or in respect of, any member, such sums by way of pension, superannuation allowances and gratuities as the Secretary of State may determine.

(3) Where a person ceases to be a member otherwise than on the expiry of his term of office, and the Secretary of State determines that there are special circumstances which make it right that he should receive compensation, the Executive shall pay to him such amount by way of compensation as the Secretary of State may determine.

Proceedings of the Executive

7.—(1) The Executive may regulate its own procedure.

(2) The validity of any proceedings of the Executive shall not be affected by any vacancy among the members or by any defect in the appointment of a member.

(3) The Executive shall consult with the Secretary of State before making or revising its rules and procedures for dealing with conflicts of interest.

(4) The Executive shall from time to time publish a summary of its rules and procedures.

Staff

8.—(1) The Executive shall, with the consent of the Secretary of State, appoint a person to act as Chief Executive on such terms and conditions as the Secretary of State may determine.

(2) The Executive shall appoint such other staff to the service of the Executive as it may determine, with the consent of the Secretary of State as to numbers of persons appointed and as to the terms and conditions of their service.

(3) The Executive shall pay to the Minister for the Civil Service at such times as that Minister may direct, such sums as the Minister may determine in respect of any increase attributable to this paragraph in the sums payable out of monies provided by Parliament under the Superannuation Act 1972.

(4) A person appointed to the staff of the Executive may not at the same time be a member of the Executive.

(5) Service as a member of staff of the Executive is service in the civil service of the State.

Performance of functions

9.—(1) Subject to sub-paragraphs (2) to (4), anything authorised or required to be done by the Executive (including exercising the powers under this paragraph) may be done by—

- (a) such members of the Executive or members of staff of the Executive as the Executive considers fit to authorise for that purpose, whether generally or specifically; or

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, *The Legislative Reform (Health and Safety Executive) Order 2008* ISBN 978-0-11-080873-4

- (b) any committee of the Executive which has been so authorised.
- (2) Sub-paragraph (1)(b) does not apply to a committee whose members include a person who is neither a member of the Executive nor a member of staff of the Executive.
- (3) The Executive—
 - (a) shall authorise such of its members of staff as it considers fit to authorise for that purpose, to perform on its behalf those of its functions which consist of the enforcement of the relevant statutory provisions in any particular case; but
 - (b) shall not authorise any member or committee of the Executive to make decisions concerning the enforcement of the relevant statutory provisions in any particular case.
- (4) The Executive shall not authorise any person to legislate by subordinate instrument.
- (5) The Executive shall publish any authorisations which it makes under this paragraph.

Accounts and Reports

- 10.**—(1) It shall be the duty of the Chief Executive—
- (a) to keep proper accounts and proper records in relation to the accounts;
 - (b) to prepare in respect of each accounting year a statement of accounts in such form as the Secretary of State may direct with the approval of the Treasury; and
 - (c) to send copies of the statement to the Secretary of State and the Comptroller and Auditor General before the end of November next following the accounting year to which the statement relates.
- (2) The Comptroller and the Auditor General shall examine, certify and report on each statement referred to in sub-paragraph (1)(c) and shall lay copies of each statement and his report before each House of Parliament.
- (3) As soon as possible after the end of the accounting year, the Executive shall make to the Secretary of State a report on the performance of the Executive's functions during the year.
- (4) The Secretary of State shall lay the report referred to in sub-paragraph (3) before each House of Parliament.
- (5) In this paragraph, "accounting year" means the period of 12 months ending with 31st March in any year; but the first accounting year of the Executive shall, if the Secretary of State so directs, be of such other period not exceeding 2 years as may be specified in the direction.

Supplemental

- 11.** The Secretary of State shall not make any determination or give his consent under paragraph 6 or 8 of this Schedule except with the approval of the Minister for the Civil Service.
- 12.**—(1) The fixing of the common seal of the Executive shall be authenticated by the signature of the Chair or some other person authorised by the Executive to act for that purpose.
- (2) A document purporting to be duly executed under the seal of the Executive shall be received in evidence and shall be deemed to be so executed unless the contrary is proved.
- (3) This paragraph does not apply to Scotland."

SCHEDULE 2

Article 21

TRANSITIONAL PROVISIONS

1. In this Schedule—

“the Act” means the Health and Safety at Work etc. Act 1974 as amended by this Order;

“the appointed day” means the day on which this Order comes into force;

“the Chairman” means the chairman of the Commission;

“Commission” means the Health and Safety Commission abolished by article 2 of this Order;

“Commissioner” means a member of the Commission;

“the existing Act” means the Health and Safety at Work etc. Act 1974 before the appointed day;

“the former Executive” means the Health and Safety Executive abolished by article 2 of this Order;

“instrument of appointment” means the letter of appointment and terms and conditions of appointment under which a Commissioner or the Chairman, or the director or other members of the former Executive were appointed;

“the new Executive” means the Health and Safety Executive as established under section 10 of the Act;

“relevant statutory provisions” has the meaning given by section 53(1) of the Act;

“servant of the former Executive” means a civil servant on the staff of the former Executive.

Transfer of Chairman and members of the Commission

2.—(1) The person who immediately before the appointed day was the Chairman shall on the appointed day become the Chair of the new Executive as if duly appointed under paragraph 2 of Schedule 2 to the Act.

(2) Any other person who before the appointed day was a Commissioner shall on the appointed day become a member of the new Executive as if duly appointed under paragraph 2 of that Schedule.

(3) While a person holds office as the Chair or other member of the new Executive by virtue of this paragraph, he shall hold that office on the terms on which he held office as the Chairman or as a Commissioner immediately before the appointed day.

(4) Sub-paragraph (3) is subject to—

(a) sub-paragraph (5), and

(b) any necessary modifications to the terms in question.

(5) A person’s term of office as a member of the new Executive shall expire on the date set out in the instrument under which he was appointed as the Chairman or as a Commissioner for the expiry of his term of office as a member of the Commission.

(6) No compensation shall be paid to either the Chairman or a Commissioner as a result of the operation of this paragraph .

Transfer of officers and staff

3.—(1) Where immediately before the appointed day a person holds appointment under paragraph 11 of Schedule 2 to the existing Act as a servant of the former Executive, his appointment shall continue in effect on and after the appointed day in the service of the new Executive as if made by the new Executive under paragraph 8(2) of Schedule 2 to the Act.

(2) The person who immediately before the appointed day was the director of the former Executive shall on the appointed day become the Chief Executive of the new Executive as if appointed by the new Executive under paragraph 8(1) of Schedule 2 to the Act.

(3) Where immediately before the appointed day a person holds appointment as a member (but not as the director) of the former Executive under section 10(5) of the existing Act, his appointment shall continue to have effect on and after the appointed day, but as a member of staff of the new Executive as if made by the new Executive under paragraph 8(2) of Schedule 2 to the Act.

(4) A person referred to in sub-paragraph (3) shall not be paid any compensation as a result of the operation of this paragraph.

First annual report and statement of accounts of the new Executive

4.—(1) This paragraph applies if there is a period of one or more days which—

- (a) began on the day after the end of the last year for which the Commission made a report under paragraph 15 of Schedule 2 to the existing Act, and
- (b) ended on the day before the appointed day.

(2) The first report published by the new Executive under paragraph 10 of Schedule 2 to the Act shall also be a report on the operations of the Commission and the former Executive during the period mentioned in sub-paragraph (1).

(3) The first statement of accounts prepared by the Chief Executive under paragraph 10 of Schedule 2 to the Act shall also contain statements of accounts for the Commission and for the former Executive for the period mentioned in sub-paragraph (1).

Investigations and special reports

5.—(1) This paragraph applies where, before the appointed day, the Commission authorised a person to investigate and make a special report under section 14(2) of the existing Act.

(2) For the purposes of carrying out or continuing the investigation and the making of a special report on or after the appointed day, the authorisation shall be treated as an authorisation by the new Executive.

(3) If—

- (a) the person to whom the Commission gave the authorisation has made a special report to the Commission, but
- (b) the Commission has not yet caused the report, or a part of it, to be made public under section 14(5) of the existing Act,

the report shall be treated as if it had been made to the new Executive under section 14(2) of the Act.

(4) If the person to whom the Commission gave the authorisation has not yet made a special report to the Commission, the new Executive may direct that person to—

- (a) abandon the investigation without making a special report, or
- (b) continue the investigation in such manner as the new Executive may direct.

(5) Where the Commission agreed before the appointed day to exercise its power under section 14(6)(a) or (c) of the existing Act to pay remuneration or expenses to any person in respect of the investigation and special report, or to defray costs of the investigation and report, the new Executive shall pay such remuneration or expenses or defray the costs of the investigation and report as agreed.

(6) Sub-paragraph (5) does not affect the new Executive's power under section 14(6) of the Act to make other payments of remuneration or expenses or to defray costs.

Inquiries

6.—(1) This paragraph applies where, before the appointed day, the Commission directed an inquiry to be held under section 14(2) of the existing Act.

(2) Section 14 of the Act shall continue to apply in relation to that inquiry on or after the appointed day but as if all things done or required to be done by or in relation to the Commission under that section were done or required to be done by or in relation to the new Executive.

(3) Where the Commission agreed before the appointed day to exercise its power under section 14(6)(b) or (c) of the existing Act to pay remuneration or expenses to any person in respect of the inquiry or to defray costs of the inquiry, the new Executive shall pay such remuneration or expenses or defray the costs of the inquiry as agreed.

(4) Sub-paragraph (3) does not affect the new Executive's power under section 14(6) of the Act to make other payments of remuneration or expenses or to defray costs.

Agreements entered into with other public bodies

7.—(1) This paragraph applies where, before the appointed day, the Commission either—

- (a) entered into an agreement under section 13(1)(a) of the existing Act with any government department or person for that department or other person to perform any of the Commission's functions; or
- (b) entered into an agreement under section 13(1)(b) of the existing Act with any Minister of the Crown, government department or other public authority to perform their functions.

(2) Any agreement to which this paragraph applies shall continue to have effect on and after the appointed day as if it had been duly entered into between that Minister of the Crown, government department, person or public authority concerned and the new Executive.

Approval of Codes of Practice

8.—(1) This paragraph applies where, before the appointed day, the Commission—

- (a) approved or issued a code of practice under section 16(1) of the existing Act; or
- (b) revised, or approved a revision (or proposed revision) of, a code of practice or part of a code of practice, under section 16(4) of the existing Act.

(2) On and after the appointed day—

- (a) any code of practice to which this paragraph applies shall have effect as if the code, and any revision of the code, had been approved or issued by the new Executive;
- (b) any withdrawal under section 16(5) of the existing Act of the Commission's approval of any code of practice to which this paragraph applies shall have effect as if it had been done by the new Executive; and
- (c) any notices issued by the Commission under section 16(3) or (6) shall have effect as if they had been issued by the new Executive.

Information

9.—(1) This paragraph applies where, before the appointed day, the Commission served a notice under section 27(1) of the Act requiring any person to furnish information to the Commission.

(2) Any notice to which this paragraph applies shall have effect on and after the appointed day as if requiring such information to be furnished to the new Executive.

(3) Information obtained by a notice to which this paragraph applies shall on the appointed day be transferred to the new Executive, and shall be treated for the purposes of section 28 to the Act as if it had been obtained by or as the case may be, furnished or disclosed to the new Executive.

Other provisions

10. Subject to paragraphs 5 to 9, anything done by, on behalf of or in relation to the Commission or the former Executive, in particular but not limited to—

- (a) any proposals submitted under section 11(2)(d) of the existing Act;
- (b) any direction given by the Secretary of State under section 12(b) of the existing Act;
- (c) any guidance given under section 18(4)(b) of the existing Act;
- (d) any appointment of inspectors made under section 19 of the existing Act;
- (e) any consultation undertaken under section 50(3) of the existing Act; or
- (f) any exercise of powers conferred on them by the relevant statutory provisions,

which is in effect immediately before the appointed day shall, so far as is necessary for continuing its effect after that day, have effect on and after the appointed day as if duly done by, on behalf of or in relation to the new Executive.

General transfer

11.—(1) By virtue of this paragraph, the property, rights and liabilities to which the Commission or the former Executive was entitled or subject immediately before the appointed day, shall become on that day the property, rights and liabilities of the new Executive.

(2) Sub-paragraph (1) has effect in relation to property, rights and liabilities—

- (a) despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict their transfer by the Commission or by the former Executive; and
- (b) without any instrument or other formality being required.

(3) So far as is necessary or appropriate in consequence of sub-paragraph (1), on or after the appointed day a reference to the Commission or to the former Executive in an instrument or other document shall be treated as a reference to the new Executive.

(4) Anything (including any legal proceedings) which—

- (a) relates to anything transferred by sub-paragraph (1); and
- (b) is in the process of being done by, on behalf of or in relation to the Commission or the former Executive,

may be continued on and after the appointed day by, on behalf of or in relation to the new Executive.

(5) Nothing in this paragraph affects the validity of anything done by the new Executive.

SCHEDULE 3

Article 22

AMENDMENTS

The enactments and instruments listed in column 1 below shall be amended to the extent set out in column 2.

<i>Column 1</i>	<i>Column 2</i>
<i>Title</i>	<i>Extent of amendment</i>
Explosives Act 1875 (c.17)	In section 103, for “the Health and Safety Commission” substitute “the Health and Safety Executive”.
Nuclear Installations Act 1965 (c.57)	In section 24A, for subsection (1) substitute— (1) This section applies to any expenses incurred by the Health and Safety Executive (“the Executive”) which the Executive may determine to be incurred wholly or partly in connection with— (a) the carrying into effect of such of the provisions of this Act as are mentioned in Schedule 1 to the Health and Safety at Work etc. Act 1974; or (b) the carrying out of research into nuclear safety.
Parliamentary Commissioner Act 1967 (c.13)	In Schedule 2, omit “The Health and Safety Commission”.
House of Commons Disqualification Act 1975 (c.24)	In Schedule 1, in Part III, for “Chairman of the Health and Safety Commission” substitute “Chair of the Health and Safety Executive”.
Sex Discrimination Act 1975 (c. 65)	In section 55(3) for “the Health and Safety Commission”, substitute “the Health and Safety Executive”.
Race Relations Act 1976 (c.74)	In Schedule 1A, in Part II, omit “The Health and Safety Commission”.
Employment and Training Act 1981 (c.57)	In section 10(2), omit “, the Health and Safety Commission”.
Gas Act 1986 (c.44)	In section 4A(1) and (2), for “the Health and Safety Commission”, substitute “the Health and Safety Executive”. In section 34, for subsection (5) substitute— “(5) The Authority shall have power to make agreements with the Health and Safety Executive for the Authority to perform on behalf of that Executive (with or without payment) any of the functions of that Executive.”.
Food and Environment Protection Act 1985 (c.48)	In section 41E(6)(c), for “the Health and Safety Commission”, substitute “the Health and Safety Executive”.
Food and Environment Protection Act 1985 (c.48)	In sections 16(10) and 25(2)(e), for “the Health and Safety Commission”, substitute “the Health and Safety Executive”.

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<i>Column 1</i>	<i>Column 2</i>
<i>Title</i>	<i>Extent of amendment</i>
Petroleum Act 1987 (c.12)	In section 24(2A), for “the Health and Safety Commission”, substitute “the Health and Safety Executive” and for “the Commission” substitute “the Executive”.
Consumer Protection Act 1987 (c.43)	In section 11(5)(c), for “the Health and Safety Commission”, substitute “the Health and Safety Executive”.
Water Act 1989 (c.15)	In section 174(2)(g), omit “the Health and Safety Commission or”.
Electricity Act 1989 (c. 29)	In section 3C(1) and (3) and in section 56C(6)(c), for each reference to “the Health and Safety Commission”, substitute “the Health and Safety Executive”.
Planning (Hazardous Substances) Act 1990 (c.10)	In section 12(3), for “the Health and Safety Commission”, substitute “the Health and Safety Executive”.
Water Industry Act 1991 (c.56)	In section 206(3)(g), omit “the Health and Safety Commission or”.
Water Resources Act 1991 (c.57)	In section 204(2)(g) omit “the Health and Safety Commission or”.
Railways Act 1993 (c.43)	In section 145(2)(e), omit “the Health and Safety Commission or”.
Coal Industry Act 1994 (c.21)	In section 4(1)(a), omit “with the approval of the Health and Safety Commission”.
	In section 59(3)(e)(ii), omit “and the Health and Safety Commission”.
Deregulation and Contracting Out Act 1994 (c. 40)	In section 37(2), in paragraphs (aa) and (ac), for each reference to “the Health and Safety Commission”, substitute “the Health and Safety Executive”.
Activity Centres (Young Persons’ Safety) Act 1995 (c.15)	In section 1— <p>(a) in subsection (2), for “the Health and Safety Commission”, substitute “the Health and Safety Executive”;</p> <p>(b) after subsection (2) insert “(2A) The Health and Safety Executive may nominate itself under subsection (2).” and</p> <p>(c) in subsection (5), after “licensing authority” insert “other than the Health and Safety Executive”, for “the Health and Safety Commission” substitute “the Health and Safety Executive” and for “the Commission” substitute “the Executive”.</p> <p>In section 3— <p>(a) in subsection (3), for “the Health and Safety Commission”, substitute “the Health and Safety Executive” and</p> </p>

<i>Column 1</i>	<i>Column 2</i>
<i>Title</i>	<i>Extent of amendment</i>
	(b) in subsection (4), for “The Health and Safety Commission” substitute “The Health and Safety Executive” and for each reference to “the Commission” substitute “the Executive”.
Environment Act 1995 (c.25)	In Schedule 22, in paragraph 30(5), for “the Health and Safety Commission” substitute “the Health and Safety Executive”.
Planning (Hazardous Substances)(Scotland) Act 1997 (c. 10)	In section 10(3), for “the Health and Safety Commission”, substitute “the Health and Safety Executive”.
Scotland Act 1998 (c.46)	In Schedule 5, in section H2, omit “The Health and Safety Commission,”.
Greater London Authority Act 1999 (c.29)	In section 235(2)(f), omit “the Health and Safety Commission or”.
Postal Services Act 2000 (c.26)	In Schedule 7, in paragraph 3(1)(f), omit “the Health and Safety Commission or”.
Utilities Act 2000 (c.27)	In section 105(4)(b), omit “the Health and Safety Commission or”.
Freedom of Information Act 2000 (c. 36)	In Schedule 1, in Part VI, omit “The Health and Safety Commission”.
Transport Act 2000 (c.38)	In Schedule 9, in paragraph 3(1)(f), omit “the Health and Safety Commission or”.
Anti-terrorism, Crime and Security Act 2001 (c. 24)	In section 77(5)(a), for “the Health and Safety Commission” substitute “the Health and Safety Executive”.
Fireworks Act 2003 (c.22)	In section 2(3)(a), for “the Health and Safety Commission” substitute “the Health and Safety Executive”.
Health Protection Agency Act 2004 (c. 17)	In section 3(7)(a), for “the Health and Safety Commission” substitute “the Health and Safety Executive”.
Domestic Violence, Crime and Victims Act 2004 (c.28)	In Schedule 9, omit paragraph 19.
Railways Act 2005 (c.14)	In Schedule 3— (a) in paragraph 1(5)(b), for “the Health and Safety Commission” substitute “the Health and Safety Executive”; and (b) in paragraph 10(2), omit “the Health and Safety Commission and of”.
Government of Wales Act 2006 (c. 32)	In Schedule 7, in paragraph 9, omit “Health and Safety Commission,”.
Fire (Scotland) Act 2005 (asp 5)	In section 61(7), for “the Health and Safety Commission” substitute “the Health and Safety Executive”.
Health and Safety Inquiries (Procedure) Regulations 1975 (1975/335)	In regulation 2(1), omit the definition of “the Commission”; and for each reference to “the Commission”, substitute “the Executive”.

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<i>Column 1</i>	<i>Column 2</i>
<i>Title</i>	<i>Extent of amendment</i>
Safety Representatives and Safety Committees Regulations 1977 (1977/500)	In regulation 4(2)(b) and in regulation 10, for each reference to “the Health and Safety Commission”, substitute “the Health and Safety Executive”, and in regulation 5(2) omit “the Health and Safety Commission or”.
Dangerous Substances In Harbour Areas Regulations 1987 (1987/37)	In Schedule 6, in paragraph 6, for “the Health and Safety Commission” substitute “the Health and Safety Executive”.
Management and Administration of Safety and Health at Mines Regulations 1993 (1993/1897)	In regulation 20(1), for “the Health and Safety Commission” substitute “the Secretary of State”.
Escape and Rescue from Mines Regulations 1995 (1995/2870)	In regulation 2(1), omit the definition of “the Commission”; In regulation 13(4), for each reference to “the Commission”, substitute “the Executive”.
Carriage of Dangerous Goods by Rail Regulations 1996 (1996/2089)	In regulation 3, for each reference to “the Health and Safety Commission”, substitute “the Health and Safety Executive”.
Carriage of Dangerous Goods by Road Regulations 1996 (1996/2095)	In regulation 5, for each reference to “the Health and Safety Commission” substitute “the Health and Safety Executive”.
Health and Safety (Enforcing Authority) Regulations 1998 (1998/494)	In regulation 2(1), omit the definition of “the Commission”; In regulation 5, in paragraph (2), omit “or by the Commission” and in paragraph (3), omit from “and where a transfer” to the end of the sub-paragraph. In regulation 6(2), for each reference to “the Commission” substitute “the Secretary of State”.
Working Time Regulations 1998 (1998/1833)	In regulation 28, in paragraph (1), omit the definition of “the Commission” and in the definition of “the Executive” for “section 10(5)” substitute “section 10(1)”, in paragraph (4), for “ the Commission” substitute “the Executive”, and omit paragraph (8).
Control of Major Accident Hazards Regulations 1999 (1999/743)	In regulation 20(1), for “and any function of the Health and Safety Commission under any other provision of the 1974 Act which is exercisable in relation to any function of the Executive”, substitute “and any function of the Health and Safety Executive under any other provision of the 1974 Act”.
Pressure Equipment Regulations 1999 (1999/2001)	In Schedule 8, in paragraph 1, omit sub-paragraph (d).
Nuclear (Environmental Assessment) Reactors Impact for	In regulation 16(1), for “and any function of the Health and Safety Commission under any other provision of the 1974 Act which is exercisable in relation to any function of the

<i>Column 1</i>	<i>Column 2</i>
<i>Title</i>	<i>Extent of amendment</i>
Decommissioning Regulations 1999 (1999/2892)	Executive” substitute “and any function of the Health and Safety Executive under any other provision of the 1974 Act”.
Ionising Radiations Regulations 1999 (1999/3232)	In regulation 24(9), for “Health and Safety Commission” substitute “Health and Safety Executive”.
Greater London Authority(Disqualification) Order 2000 (2000/432)	In paragraph 10 of Part II of the Schedule, for “Chairman of the Health and Safety Commission” substitute “Chair of the Health and Safety Executive”.
Genetically Modified Organisms (Contained Use) Regulations 2000 (2000/2831)	In regulation 26(1), for “any function of the Health and Safety Commission under any other provision of the 1974 Act which is exercisable in relation to any function of the Executive” substitute “Any function of the Health and Safety Executive under any other provision of the 1974 Act”.
Biocidal Products Regulations 2001 (2001/880)	In Schedule 11, in paragraph 2(2), for “Any function of the Health and Safety Commission under any other provision of the 1974 Act which is exercisable in relation to any function of the Executive” substitute “any function of the Health and Safety Executive under any other provision of the 1974 Act”.
Race Relations Act 1976 (Statutory Duties) Order 2001 (2001/3458)	In Schedule 1, omit “the Health and Safety Commission”.
Chemicals (Hazard Information and Packaging for Supply) Regulations 2002 (2002/1689)	In regulation 14(2), for “Any function of the Health and Safety Commission under any other provision of the 1974 Act which is exercisable in relation to any function of the Executive”, substitute “Any function of the Health and Safety Executive under any other provision of the 1974 Act”.
Control of Lead at Work Regulations 2002 (2002/2676)	In regulation 2, in the definition of “low solubility glaze” and in the definition of “occupational exposure limit for lead”, for “the Health and Safety Commission” substitute “the Health and Safety Executive”. In regulation 10(15), for “the Health and Safety Commission” substitute “the Health and Safety Executive”.
Control of Substances Hazardous to Health Regulations 2002 (2002/2677)	In regulation 2, in the definition of “approved classification”, in the definition of “substance hazardous to health” and in the definition of “workplace exposure limit”, for each reference to “the Health and Safety Commission”, substitute “the Health and Safety Executive”. In regulation 11(11), for “the Health and Safety Commission” substitute “the Health and Safety Executive”. In Part I of Schedule 3, paragraph 3, in sub-paragraphs (5) and (6), for each reference to “the Health and Safety Commission”, substitute “the Health and Safety Executive”.

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<i>Column 1</i>	<i>Column 2</i>
<i>Title</i>	<i>Extent of amendment</i>
	In Schedule 5, in column 2, for “the Health and Safety Commission” substitute “the Health and Safety Executive”.
Cableway Installations Regulations 2004 (2004/129)	In regulation 23(2), for “and any function of the Health and Safety Commission under any other provision of the 1974 Act which is exercisable in relation to any function of the Executive”, substitute “and any function of the Health and Safety Executive under any other provision of the 1974 Act”.
Civil Aviation (Working Time) Regulations 2004 (2004/756)	In regulation 3, omit the definition of “the Commission” and in the definition of “the Executive” for “referred to in section 10(5)”, substitute “referred to in section 10(1)”. In Schedule 2, paragraph 8, in sub-paragraphs (3)(a) and (5)(a), omit “the Commission,”, and for sub-paragraph (4), substitute— (4) In the preceding paragraph, any reference to the Executive, the CAA or a government department includes respectively a reference to an officer of that body, and also, in the case of a reference to the Executive, includes a reference to— (a) a person performing any of the functions of the Executive by virtue of section 13(3) of the 1974 Act; (b) an officer of a body which is so performing any such functions; and (c) an adviser appointed in pursuance of section 13(7) of the 1974 Act.
Adventure Activities Licensing Regulations 2004 (2004/1309)	In regulation 18, for “the Health and Safety Commission” substitute “the Health and Safety Executive”.
Export and Import of Dangerous Chemicals Regulations 2005 (2005/928)	In regulation 1, omit the definition of “the Commission”. In regulation 2, for “Commission” substitute “Executive”. In regulation 4(2), for “and any function of the Health and Safety Commission under any other provision of the 1974 Act which is exercisable in relation to any function of the Executive” substitute “and any function of the Health and Safety Executive under any other provision of the 1974 Act”.
Regulatory Reform (Fire Safety) Order 2005 (2005/1541)	In regulation 26(3), for “the Health and Safety Commission” substitute “the Health and Safety Executive”.
Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005 (2005/2966)	In Part 1 of Schedule 1, omit “the Health and Safety Commission”.
Control of Asbestos Regulations 2006 (2006/2739)	In regulation 2, in the definition of “approved”, omit “the Health and Safety Commission or” and in the definition of

<i>Column 1</i>	<i>Column 2</i>
<i>Title</i>	<i>Extent of amendment</i>
	<p>“the control limit”, for “the Health and Safety Commission” substitute “the Health and Safety Executive”.</p> <p>In regulation 3(3), for each reference to “the Health and Safety Commission” substitute “the Health and Safety Executive”.</p>
<p>Sex Discrimination Act 1975 (Public Authorities) (Statutory Duties) Order 2006 (2006/2930)</p>	<p>In the Schedule, omit “The Health and Safety Commission”.</p>
<p>Scottish Parliament (Disqualification) Order 2007 (2007/285)</p>	<p>In Part I of the Schedule, omit “Any member of the Health and Safety Executive” and for “Chairman and any member of the Health and Safety Commission” substitute “Chair and any member of the Health and Safety Executive”.</p>
<p>Adventure Activities (Licensing) (Designation) Order 2007 (2007/447)</p>	<p>In regulation 2, omit “by the Health and Safety Commission”.</p>
<p>Coal Mines (Control of Inhalable Dust) Regulations 2007 (2007/1894)</p>	<p>In regulation 2, in the definitions of “exposure control limit” and “exposure control limit for quartz”, for each reference to “Health and Safety Commission” substitute “Health and Safety Executive”.</p>
<p>Legislative and Regulatory Reform (Regulatory Functions) Order 2007 (2007/3544)</p>	<p>In the Schedule, omit “Health and Safety Commission”.</p>

EXPLANATORY NOTE

(This note is not part of the Order)

1. This Order amends the Health and Safety at Work etc. Act 1974 (“the Act”) with the aim of modernising and improving the corporate structure of the bodies responsible for regulating health and safety in Great Britain. It abolishes the Health and Safety Commission and the Health and Safety Executive, replacing them with a single Health and Safety Executive (“the Executive”) exercising the combined functions of those bodies.

2. The Executive comprises up to 12 members appointed by the Secretary of State. The Executive appoints a Chief Executive and the other staff of the Executive.

3. Article 2 abolishes the existing Health and Safety Commission and Executive. Articles 4 to 20 amend the Act to provide for the establishment and the functions of the new Executive.

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4. Article 5 replaces sections 11 to 13 of the Act with three new sections. Section 11 confers functions on the new Executive. Section 12 confers functions on the Secretary of State. The functions reproduce the functions conferred by the existing Act, save that the Secretary of State is prohibited from giving directions as to the enforcement of the relevant statutory provisions in a particular case. Section 13 reproduces the powers currently in sections 11(6) and 13 of the Act.

5. Article 6 amends section 14 of the Act to allow the new Executive to investigate, authorise other people to investigate or direct inquiries.

6. Article 10 inserts two new subsections ((4A) and (4B)) into section 18 of the Act. The new subsection (4A) allows the Executive to issue guidance to the local authorities but requires it to consult them. Subsection (4B) requires the Executive and the local authorities to work together to establish best practice and consistency in the enforcement of health and safety law.

7. Other articles of the Order make minor and consequential amendments of the Act.

8. Schedule 1 to the Order substitutes a new Schedule 2 into the Act. This Schedule sets out the constitution of the Executive. Paragraph 2 provides for the Chair of the Executive and up to eleven other members to be appointed by the Secretary of State. Three members of the Executive must be appointed following consultation with employers' associations, and likewise, three must be appointed following consultation with employees' associations. One member of the Executive must be appointed following consultation with organisations representing local authorities. Up to four others may be appointed following consultation with professional bodies and the devolved administrations. Members of the Executive will not be civil servants.

9. Paragraphs 3 to 6 of Schedule 2 set out how members hold their offices, their remuneration and how they can be removed from office. Paragraph 7 requires the Executive to consult with the Secretary of State before making or revising its procedure dealing with conflicts of interest; and it must publish a summary of its rules and procedures.

10. Paragraph 8 of Schedule 2 provides for the appointment of the Chief Executive and staff of the Executive. Both the Chief Executive and staff will be civil servants.

11. Paragraph 9 of Schedule 2 enables the Executive to authorise its members and staff to carry out its non-legislative functions. Particular provision applies for authorising the performance of its enforcement functions in particular cases. Any authorisations made under that paragraph are to be published.

12. Schedules 2 and 3 to the Order set out transitional and consequential provisions.